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ADULTERY OF INSANE WIFE AS GROUND FOR DIVORCE.

The practically universal rule as laid down by the cases and the text-writers is that adultery committed by a wife while she is insane furnishes no ground for divorce.¹ But in a much criticised case² it was held by the Supreme Court of Pennsylvania that a wife's insanity, though so absolute as to have effaced from her mind the first lines of conjugal duty, would not be a defense to a suit for divorce on the ground of adultery. The decision was placed upon the ground that the adultery of the wife although she be insane tends to impose a spurious offspring upon the husband. The court reasoned that as the primary intent of divorce for adultery is undoubtedly to keep the sources of generation pure, when they have been corrupted, the preventive remedy is to be applied without regard to the moral responsibility of the subject of it.³ In the course of the opinion the court said:

"The great end of matrimony is not the comfort and convenience of the immediate parties, though these are necessarily embarked in it; but the procreation of a progeny having a legal title to maintenance by the father."

Mr. Bishop admits the force of this reasoning, but says that the doctrine laid down in the case is wholly without support.⁴

1. *Wray v. Wray*, 19 Ala. 522; *Broadstreet v. Broadstreet*, 7 Mass. 474; *Kretz v. Kretz*, 73 N. J. Eq. 246, 67 Atl. 378; *Nichols v. Nichols*, 31 Vt. 328, 73 Am. Dec. 352; Long on Domestic Relations, § 219; 1 Bishop on Mar. & Div. § 712; 14 Cyc. 629.

On the same principle it is held that adultery committed by the wife while insane is no bar to her claim for alimony. *Mims v. Mims*, 33 Ala. 98; *Wray v. Wray*, 33 Ala. 190.

2. *Matchin v. Matchin*, 6 Penn. St. 332, 47 Am. Dec. 466.

3. "The offense is a social, as well as a moral one; and it is agreed by the civilians to be less grievous to the sufferer, though not less immoral, when it is committed by the husband, whose transgression can not impose a supposititious offspring on the wife, than it is when committed by the wife, whose transgression may impose such an offspring on the husband." *Matchin v. Matchin*, 6 Penn. St. 332, 47 Am. Dec. 466.

4. 1 Bish. Mar. & Div. § 712.

And the doctrine has been distinctly and vigorously repudiated by the cases.⁵ It was said by the Vermont Court:

"The reason is one which will have no application to similar acts committed by the husband, and as applied to the wife, seems truly revolting to all just sense of propriety and decency. We are surprised that such an opinion should ever have found admission into the reports, and should be shocked at the prospect that it could ever gain general countenance in the American republic."⁶

If the reasoning of the Pennsylvania decision be sound a husband would be entitled to a divorce from his wife because she was the victim of a rape.⁷ In such case there would be the same danger of spurious issue as in case of adultery committed while she was insane. The gist of the offense of adultery is not the danger of issue, but the unfaithfulness to the marriage vow, and if the wife does not voluntarily indulge in illicit intercourse she is certainly not morally guilty of any violation of her obligations, though intercourse does take place by force or fraud, or by taking advantage of her insanity.

The Vermont court, in the case above quoted, also said:

"It was in the power of the husband always to guard against such consequences. And if he failed in this duty, he surely could not ask the court to visit the consequence of his own misconduct upon the unfortunate being whom, having sworn to love, comfort, honor, and keep, in sickness and in health, till death, he had chosen to abandon to the short charity of a proverbially heartless world in the hour of her utmost necessity.

And if the case were shown of those to whose care the husband had prudently intrusted his wife for care or for cure (as he might lawfully do) having betrayed or abused this confidence to purposes of crime on their part, as might possibly occur without his fault, he surely could not blame his insane wife for the treachery of his own agents or their

5. See cases cited in footnote 1.

6. *Nichols v. Nichols*, 31 Vt. 328, 73 Am. Dec. 352.

7. *Kretz v. Kretz*, 73 N. J. Eq. 246, 67 Atl. 378.

"It would entitle the husband to a divorce, if another man should gain access to her by force or fraud." *Wray v. Wray*, 19 Ala. 522, 525.

assistants. In insanity, it is well known that the subject is liable to such illusions as to mistake utter strangers for the nearest relatives. If, too, they retain only the ordinary stimulus of propensity at such a time, with no power of self-control, they are, of course, at the mercy of every base man. But in many cases sexual propensity is more or less excited during insanity, and the liability to such contingencies proportionally increased."⁸

NYPHOMANIA AS CONSTITUTING INSANITY.

Adultery committed under the irresistible impulse of that morbid activity of the sexual propensity which is called nymphomania or erotic mania, is a ground of divorce.⁹ It is not such insanity as will excuse adultery. Where the evidence showed that the wife's mind was weak and her moral perceptions were blunted, that her disposition to licentiousness was pronounced and notorious, that she was unrestrained and shameless in her abandonment to the gratification of her sensuality, and that she was lost to shame, and her vicious tastes and inclinations were too powerful to be controlled by the demands of duty or the restraints of society, it was held that insanity as an excuse for adultery was not established.¹⁰

EFFECT OF ADJUDICATION OF INSANITY.

A divorce will be granted where it is satisfactorily shown that the wife was sane at the time the adultery was committed, notwithstanding she had previously been adjudicated a lunatic and such adjudication remains unreversed. Such insanity is presumed to have continued until the time of the act, but the presumption of continuance may be rebutted by showing that she was sane at the time of the adultery, and when the presumption is rebutted the burden of proving sanity at the time of its commission is cast upon the one alleging it.¹¹

B. S.

8. *Nichols v. Nichols*, 31 Vt. 328, 73 Am. Dec. 352, 353.

9. *Matchin v. Matchin*, 6 Penn. St. 332, 47 Am. Dec. 466.

10. *Hill v. Hill*, 27 N. J. Eq. 214.

11. *Cook v. Cook* (N. Y.), 53 Barb. 180.